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OFFICE OF PETITIONS

In re Application of	: DECISION GRANTING
Gosling, et al.	: PETITION UNDER 37 CFR
Application No. 10/787,018	: 1.183 and GRANTING
Filed: February 24, 2004	: PETITION UNDER 37 CFR
Atty. Dkt. 019934-000723US	: 1.48

This decision is in response to the petition under 37 CFR 1.183 to waive the requirements of 37 CFR 1.48(a)(3), the petition under 37 CFR 1.48, and the petition under 37 CFR 1.47, filed December 10, 2004.

The above-identified application was filed February 24, 2004 and named J. Gosling, D.J. Dairaghi, M. Hanley, Z. Miao, D. Talbot, and T.J. Schall as joint inventors. Petitioners herein seek to correct the inventive entity of this application by deleting DALE TALBOT as a joint inventor.

DECISION UNDER 37 CFR 1.183

The provisions of 37 CFR 1.183 provide that "[i]n an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Commissioner or the Commissioner's designee, *sua sponte*, or on petition of the interested party, subject to such other requirements as may be imposed."

Petitioners seek to correct the inventive entity in the instant application by submitting a petition under 37 CFR 1.48. Petitioner is required under 37 CFR 1.48(a)(3) to submit an oath or declaration by the actual inventor or inventors as required by §1.63 or as permitted by §§ 1.42, 1.43 or § 1.47. Petitioners are unable to comply with this requirement because one of the inventors has either refused to sign the supplemental declaration or cannot be reached or located to sign the supplemental declaration.

Petitioners have established that inventor Michael Hanley has refused to execute the supplemental declaration for the above-

identified application or cannot be reached or locate to execute the same.

Accordingly, the petition under 37 CFR 1.183 to waive the requirements of 37 CFR 1.48(a)(3) is hereby **GRANTED**.

DECISION UNDER 37 CFR 1.48

A grantable petition under 37 CFR 1.48(a) requires: (1) a request to correct the inventorship that sets forth the desired inventorship change; (2) a statement from each person being added as an inventor and from each person being deleted as an inventor that the error in inventorship occurred without deceptive intention on his or her part; (3) an oath or declaration by the actual inventor or inventors as required by § 1.63 or as permitted by §§ 1.42, 1.43 or § 1.47; (4) the processing fee set forth in § 1.17(i); and (5) if an assignment has been executed by any of the original named inventors, the written consent of the assignee (see § 3.73(b) of this chapter).

The instant petition has been reviewed and found in compliance with the provisions of 37 CFR 1.48(a). Accordingly, it has been found that this nonprovisional application, as filed, through error and without deceptive intent, improperly set forth the inventorship, and accordingly, this application has been corrected in compliance with 37 CFR 1.48. The inventorship of this application has been changed by deleting DALE TALBOT as a joint inventor.

Accordingly, the petition under 37 CFR 1.48 is hereby **GRANTED**.

Enclosed please find a corrected filing receipt whereupon the requested deletion of inventor can be noted.

DECISION UNDER 37 CFR 1.47

The first executed oath or declaration filed establishes the inventive entity of an application. Moreover, the provisions of 37 CFR 1.47 are only applicable to original oaths or declarations. Further, the provisions of 37 CFR 1.47 may not be utilized for the purposes of correcting an error in inventorship made without deceptive intent. See, 37 CFR 1.41(a)(1), 37 CFR 48(f)(1), and MPEP 201.03.

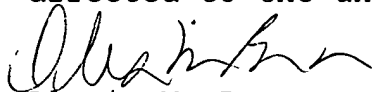
Wherein an original executed oath or declaration has been submitted and it is later determined that the original executed

oath or declaration failed to set forth the correct inventive entity and this error in inventorship was made without deceptive intent, a petition under 37 CFR 1.48 may be filed. A petition under 37 CFR 1.47 filed in conjunction with a petition under 37 CFR 1.48 would be appropriate wherein an inventor that was not named in the original executed oath or declaration refuses to execute the amended oath or declaration in accordance with 37 CFR 1.63.

The provisions of 37 CFR 1.47 cannot be utilized for the purposes of correcting an error in inventorship in an original executed oath or declaration wherein an inventor that executed the original oath or declaration thereafter refuses to sign or cannot be located to sign the amended oath or declaration. See, MPEP 201.03(B) for further guidance.

The instant application was filed February 24, 2004 at which time a fully executed declaration was submitted. Accordingly, the petition under 37 CFR 1.47 is inappropriate and hereby **DISMISSED**.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3205.



Alesia M. Brown
Petitions Attorney
Office of Petitions

Enclosure: Corrected Filing Receipt